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11/004,978	12/07/2004	Shawn T. Quast		1954

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CANADA

EXAMINER

LUKS, JEREMY AUSTIN

ART UNIT	PAPER NUMBER
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2837

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05/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

11/004,978

Applicant(s)

QUAST, SHAWN T.

Examiner

Jeremy Luks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, 8, 9, 12-16 and 19-21 rejected under 35 U.S.C. 102(b) as being anticipated by Shuen (6,340,144). Shuen teaches an apparatus (Figure 6, #1, 2, 3) for attachment to a tail pipe (4) of a vehicle comprising: an elongate bracket (2) operative to be coupled to said tail pipe (4) and having an end (end of slide bar #21) extendable beyond an outlet of said tail pipe (4); an endplate (1) coupled (via #25) to said end; a symbol formed as a part of said endplate (1) and operative to be viewed by all observer outside said vehicle (Col. 2, Lines 13-15); wherein said endplate (1) prevents said observer from viewing a substantial part of said tail pipe (4); wherein said symbol comprises at least one marking on a surface of said endplate (1) (Col. 2, Lines 13-15); a rotatable attachment (via slots #121 and orifices #251) between said elongate bracket (2) and said endplate (1); wherein said elongated bracket (1) comprises a retaining tab (Figures 13 and 14, #204) operative to be engaged to an inside surface of an outlet edge of said tail pipe (4) (see Figure 14); first means (Figure 6, #2) for suspending said endplate (1) beyond an outlet of said tail pipe (4); second means (25) for positioning said endplate (1) in order to obstruct an observer's view of said tail pipe (4); a third

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means (Figures 4 and 6, #121) for preventing said endplate (1) from obstructing flow of exhaust gases from said tail pipe (4) and for rotatably attaching said endplate (1) to said first means (2); a third means (3) for securing the apparatus to the tailpipe (4), and a third means (11) for hanging said endplate (1) near vertical.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3-5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuen (6,340,144) in view of Tregear (2,506,119). Shuen is relied upon for the reasons and disclosures set forth above. Shuen further teaches a bracket (Figure 6, #2) having first (20) and second (21) sections; said first section (20) mountable flush with said tail pipe (4) and said second section (21) oriented such that said endplate (1) is hangable to obscure from view at least a portion of an exhaust system (tailpipe #4) of a vehicle; wherein said endplate (1) is rotatable (See Figure 4) within said bracket (2). Shuen fails to teach wherein said bracket comprises a bend separating said bracket into first and second sections; said second section angled such that said endplate is hangable; wherein said bracket comprises a circular bend formed at said end and through a slot in said endplate; wherein said endplate is rotatable within said circular

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bend. Tregear teaches wherein a bracket (Figures 1 and 3, #12) comprises a bend (23) separating said bracket (12) into first (20) and second (portion between #17 and #23) sections; said second section angled such that said endplate (denoted by #18) is hangable when used in combination; wherein said bracket (17) comprises a circular bend (17) formed at an end and through a slot in said endplate (denoted by #18) when used in combination; wherein said endplate is rotatable within said circular bend (17) when used in combination. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Shuen, with the apparatus of Tregear to provide a bracket extending to greater or lesser extent toward a vertical or horizontal position.

3. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shuen (6,340,144) in view of Tregear (2,506,119) as applied to Claim 5, and further in view of Ooishi (JP 08319825). Shuen and Tregear are relied upon for the reasons and disclosures set forth above. Tregear further teaches a circular bend (Figure 1, #17). Shuen and Tregear fail to teach a sound dampener disposed within said circular bend. Ooishi teaches a sound dampener (Figure 4, #7 and 8; Figures 8 and 9, #21 and 31) disposed within circular bend (Figure 8 and 9, #30) when used in combination. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Shuen as modified, with the apparatus of Ooishi to dampen vibrations and sounds transferred between mounting connections at a muffler end.

4. Claims 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuen (6,340,144) in view of Wang (D465,181). Shuen is relied upon for the reasons

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and disclosures set forth above. Shuen further teaches a symbol formed as a part of said endplate (1) (Col. 2, Lines 13-15). Shuen fails to teach wherein said symbol comprises at least one hole formed in said endplate in the shape of said symbol. Wang teaches an endplate comprising at least one hole formed in the shape of said symbol when used in combination (see Figures 1 and 5; Description of Figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Shuen, with the apparatus of Wang to prevent gases from being directed off of the end plate and back toward the tailpipe exit.

Response to Arguments

5. Applicant's arguments filed 3/19/07 have been fully considered but they are not persuasive. The Examiner considers the obvious combination of Shuen, Tregear, Ooishi and Wang to teach all of the limitations as claimed by Applicant.

6. With respect to Claims 1, 8, 12, 14 and 19, The Examiner considers a picture or decorative article locked by screws or adhered to by double-face glue onto the endplate to be the same as being part of the endplate (See Shuen Col. 3, Lines 6-11). Also, it has been held that constructing a various elements into a single integral structure involves only routine skill in the art. The examiner also submits that it is well known to print pictures or decoration directly onto a surface as photo imaging stores print images onto mugs, shirts and many other items. Further the Examiner considers the picture or decorative article of Shuen (Col. 3, Lines 6-9) to be the same as a marking. A marking could be any kind of picture or symbol and therefor the claim limitation is met

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by Shuen. Also, the Examiner has found no teaching in Shuen that excludes the fixing bar #20 and restricting member #203 from being a bracket. The two elements are used as supports and are brackets. Applicant is merely arguing that the words used to describe the supporting elements are different. Applicant has provided no evidence excluding members #20 and #203 of Shuen from being brackets. Further, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

7. In response to applicant's arguments regarding claims 4, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Tregear was used to show that the structural configuration of the claimed bracket is well known. The Examiner also points out that the bracket #12 of Tregear is connected to a plate #10 through a slot, and when combined with Shuen, the flower pot #18 or Tregear would be replaced by the endplate #1 of Shuen and connected via a slot similar to the slot #16 of Tregear on end #17. The Examiner notes that it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Further it has been held that mere duplication of the essential working parts of a device (i.e the slot #16 or Tregear) involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

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Also, the connection of the flowerpot #18 in Tregear by the unlabeled string or rope element is a slot like opening.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks
Patent Examiner
Art Unit 2837
Class 181



LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER